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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 UNITED STATES OF AMERICA,

8 Plaintiff(s),

9 v.

10 DANIEL JAMES BARNES,

11 Defendant(s).

Case No. 2:13-CR-423 JCM (GWF)

ORDER

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13 Presently before the court is the United States' motion to increase security during trial.
14 (Doc. # 231).¹ Defendant Daniel Barnes has not filed a response.

15 The government argues that Mr. Barnes has a history of violence. Defendant has recently
16 threatened to "knock out" his own attorney, which was the basis for counsel's motion to withdraw,
17 which the court denied. (Doc. ## 229, 233). The government asks the court to consider increased
18 security measures, specifically shackling of the defendant, to ensure the security of all persons
during the course of the trial.

19 The determination as to whether a defendant should be shackled during trial is within the
20 sound discretion of the district court. *United States v. Cazares*, 788 F.3d 956, 963 (9th Cir. 2015).
21 In exercising this discretion, the district court must: (1) be persuaded by compelling circumstances
22 that some measure is needed to maintain the security of the courtroom; and, (2) pursue less
23 restrictive alternatives before imposing physical restraints. *Id.*

24 The right to appear before a jury free of shackles is not absolute. *Wilson v. McCarthy*, 770
25 F.2d 1482, 1484-85 (9th Cir. 1985). Shackling is inherently prejudicial, but it is not *per se*
26 unconstitutional. *See Spain v. Rushen*, 883 F.2d 712, 716 (9th Cir. 1989). Under certain

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28 ¹ The United States' motion also requests an order restricting defendant's contact with
witnesses. The court addressed that part of the motion in a separate order. (*See doc. # 234*).

1 circumstances, "shackling . . . may be appropriate because of the public's competing interest in
2 courtroom security and the just administration of law." *Id.* at 722 (citing *Allen v. Illinois*, 397 U.S.
3 at 344). *Duckett v. Godinez*, 67 F.3d 734, 748 (9th Cir. 1995).

4 In deciding whether less restrictive alternatives to shackling exist, a trial court must begin
5 by assessing the disadvantages and limitations if shackles are applied to a defendant. *Spain v.*
6 *Rushen*, 883 F.2d at 721. Such disadvantages and limitations include (1) reversal of the
7 presumption of innocence, (2) impairment of the defendant's mental ability, (3) impeding of
8 communication between the defendant and his counsel, (4) detracting from the decorum of the
9 trial, and (5) pain. *Id.* "After considering these factors, the trial judge 'must weigh the benefits and
10 [these] burdens of shackling against other possible alternatives.'" *United States v. Cazares*, 788
11 F.3d 956, 965 (9th Cir. 2015) (quoting *Spain v. Rushen*, 883 F.2d at 721). The trial court need not
12 hold a hearing or make explicit findings, however, before ordering a defendant shackled during
trial. *Id.* at 886.

13 The United States represents that it has heard defendant Barnes make physical threats
14 against his attorney during recorded phone calls with a third party. These threats include statements
15 that he desires to "knock out" his attorney and that he may resort to "laying hands" on counsel.
16 Mr. Barnes has similarly threatened to "choke out" a female acquaintance while he spoke to her
on the phone during a recorded call.

17 During the United States' pre-plea criminal history investigation, it found that Mr. Barnes
18 has been convicted of at least one crime of violence. The government argues that defendant has
19 displayed a pattern of paranoia in his dealings with counsel, in his improper court filings, and
20 during the recorded conversations. The government also reminds the court that one of Mr. Barnes
21 previous attorneys in this matter withdrew after "Barnes engaged in verbal and physically
22 aggressive behavior which caused [his prior attorney] to feel personally threatened." (Doc. # 117
23 at 3).

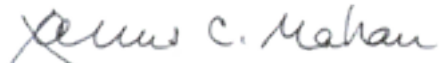
24 The court is persuaded by these compelling circumstances that increased measures are
25 necessary to maintain the security of the courtroom. The court has considered less restrictive
26 alternatives, but given Barnes' threats against the man who must share counsel table with him, it
27 does not find that any less restrictive, practicable measure will maintain the security of the
28 courtroom. The court has considered the *Spain* factors listed above and concludes that the benefits
of maintaining security outweigh the burden on Mr. Barnes.

1 The court is cognizant of the prejudicial effect of the shackles against defendant. The
2 court's staff and the United States Marshals Service shall exercise due care to ensure that
3 defendant's shackles are not seen by any juror or prospective juror. Defendant will be brought into
4 and out of the courtroom outside the jury's presence, and drapes will be placed around counsel
5 table to obscure the jury's view of the restraints.

6 Accordingly,

7 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the United States'
8 motion to increase security during trial (doc. # 231) be, and the same hereby is, GRANTED in
9 part, consistent with the foregoing and the court's prior order. (Doc. # 234).

10 DATED March 31, 2016.

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13 UNITED STATES DISTRICT JUDGE
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